

OGC Has Reviewed

POINTS TO CONSIDER RE OGC 69-1962

The legality and necessity of the home leave proposal was raised by the Executive Director, and he was given reassurance on these points. (Initially, the OGC member concurred in the Task Force Report. Mr. Houston's later concurrence on 17 April 1969 covered the entire proposal, including the section on home leave eligibility in the event of an approved return short of tour. See attached.)

OGC 69-1962 indicates there is no necessity to invoke the Director's special authorities to adopt other provisions of law to administration of the Agency in those situations not requiring a shorter-than-eighteen-month tour [REDACTED]

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than 24 months). The Task Force advocated the need for home leave eligibility in the event of approved returns short of tour not only for cover reasons but also foresaw the need in individual cases on operational, administrative, health, or hazardous grounds. In recommending adoption of the home leave proposal (see attached), the DDS commented upon the additional flexibility to be gained by allowing home leave where the return of an individual short of tour is in the Agency's interest. Most of the reasons he cited were operational -- evacuation, reduction in staffing, an employee is needed elsewhere, etc.

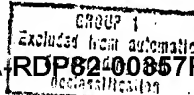
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Significantly, [REDACTED] provides for the necessity of the return short of tour to be decided by top officials of the Agency (Deputy Director concerned, Head of Career Service concerned and D/Pers). The regulation requires the Government's interest to be fully explained (not merely cited). In brief, the policy [REDACTED] recognizes that there may be a need to deviate from a normal tour either when seen at the beginning or when a situation arises towards the end of an employee's tour.. The Task Force Report felt an individual should not be penalized by denying him home leave when his return short of tour after 18 months is needed by the Agency. The DDS implicitly recognized this point in the reasons he gave to the Executive Director for adoption of the home leave proposal, i.e., acquire additional flexibility in first tours and "short-fall to completion of 24 months often involves only a few days or weeks." In sum, the case for providing home leave to an individual upon completion of a prescribed tour appears as valid when he is directed back early in the Government's interest (a reconstituted tour) as when he is given a tour under 24 months at the outset in the Government interest.

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OGC 69-1962 acknowledges the Agency's basic home leave authority is in the Overseas Differential and Allowances Act of 1960. It further states the draft regulation is correct in providing for home leave when employees serve shorter tours but incorrect in allowing home leave when they fail to serve (for some reason) tours more than 18 but less than 24 months abroad.. These comments may infer that the Agency can only adopt other administrative authorities in areas where the Agency is lacking in explicit authority. If this is so, there is no concrete

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evidence to this effect in the original papers establishing authority of the Executive Director to adopt the administrative authorities in other laws. Moreover, the General Counsel in recommending the delegation of this authority to the Executive Director explicitly acknowledged in his memorandum that the proposal "suggests as a solution in effect abandoning completely the standards of section 4 of P.L. 81-110 which are the pertinent provisions and relying entirely on the authority vested in the Director by section 8." (See attachment.)

The General Counsel and the DDS point out in their memorandums dated 17 April 1969 that second tours after an intervening PCS in the US entail a minimum of 24 months for home leave eligibility (see attachment). If we are prevented from relying fully on the authority in the Foreign Service Act for home leave, we would have to cease the Agency's present policy of allowing home leave following the completion of prescribed service in subsequent tours under 24 months unless it were concluded that the Overseas Differentials and Allowances Act is not to be applied except to returns short of tour. The reaffirmation in

(cited in the DDS memo 17 April 1969). These two factors further support the need for adopting the Foreign Service Act in its entirety as a basis for clear-cut, flexible and uniform home leave administration.

The concept in OGC 69-1962 not only would occasion revision of the proposed tour and home leave policies and implementing regulations but may affect other uses of adoptive administrative authority. This possibility needs to be examined.

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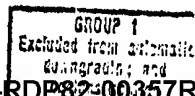
I. Background - Home Leave Proposal

Memo for DCI from GC and DGC dated 23 Aug 67: "We therefore recommend that the Director utilizing the authority of Sections 8(a)(2) and 8(b) approve the principle that the Agency may adopt the administrative authorities (except salary) of the Foreign Service Act, as amended, or as it may hereafter be amended, or any other laws when it is determined by the Executive Director-Comptroller to be necessary for the proper administration of all employees of the Agency." (Approved by DCI 5 Oct 67; concurred in by C/Audit Staff, DPPB and DDS.)

Accompanying memo for DCI from GC dated 23 Aug 67: "The memorandum /reference to above/ then suggests as a solution in effect abandoning completely the standards of section 4 of P.L. 81-100 which are the pertinent provisions and relying entirely on the authority vested in the Director by section 8 We believe the Director has ample legal authority to adopt administratively the travel expenses, allowances and fringe benefits sections of the Foreign Service Act or, for that matter, any other laws. Consequently, we are recommending that the Director approve such action authorizing the Executive Director to designate specific provisions of law which the Agency will follow in the future."

Memo for DDS from Exec Dir-Compt dated 10 Oct 67: The Director has approved utilizing the Agency's statutory authorities to adopt the administrative authority (except salary) of the Foreign Service Act, as amended, or as it may hereafter be amended, or any other law determined to be necessary for the proper administration of all employees of proper administration of all employees of the Agency The principle involved is to make sure that the travel expenses, allowances and other fringe benefits provided to Agency employees are as favorable as those provided in existing laws or in laws hereafter enacted for other Government employees in similar circumstances Please have a review made of the existing Agency authorities in the field, involved and, in coordination with the Office of General Counsel and the Office of Legislative Counsel, recommend to me what changes; if any, are appropriate in the light of this principle.

Memo for D/Pers, D/Fin, D/Log from DDS dated 17 Oct 67: Appointed Committee on Administrative Authorities to perform task directed by Executive Director.



II. Action on Home Leave Proposal

Committee Report on Administrative Authorities dated March 1968, Proposal 2 (requiring adoption of authority of Secretary of State and approval by Executive Director-Comptroller): Authorize home leave either on an initial or subsequent tour following completion of whatever period of service is required (normally 24 months) for home leave at his station or has been prescribed for him personally in connection with an overseas assignment.... The period of home leave eligibility applicable to each employee, whether 24 months or some other approved period, should be shown in an Overseas Agreement and adhered to "unless a return short of tour with entitlement to home leave is subsequently approved" by the D/Pers and Career Service upon request by Operating Official concerned. (Report signed by OP, OF, OL and OGC Committee members.)

Memo for Exec Dir-Compt from DDS dated 17 Apr 69 (attached): Adoption of the authority in the Foreign Service Act to grant home leave for overseas service less than 24 months would provide desirable additional flexibility dealing with present first tour problems where the return of individuals short of 24 months [underscoring supplied] is in the Agency's interest -- evacuation, completion of assignment, reduction in staffing or desire for the employee's service elsewhere. The shortfall to completion of 24 months' often involves only a few days or weeks (Concurred in by GC by his memorandum dated 17 April 69. See below.)

Memo for Exec Dir-Compt from GC dated 17 April 69 (attached): "Based upon justification and circumstances set forth in the memorandum from the DDS believe the recommended action would be proper under the Director's approval to utilize the Agency's statutory authorities of the Foreign Service Act ..." CG particularly noted the more rigid interpretation that a second tour after an intervening PCS tour in US is treated as an initial tour of 24 months. Per the CG, this decreases Agency flexibility and strengthens adoption of Foreign Service law.